# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>KEITH DUANE NEER,<br><br>Appellant. | No. 32994-8-II<br><br><br><br><br><br>UNPUBLISHED OPINION |

ARMSTRONG, J. -- Keith Duane Neer appeals his conviction for unlawful possession of methamphetamine, arguing that the trial court should have suppressed the drug evidence because the police found it during an unlawful search. We agree with the trial court that the warrantless search was justified because the officer reasonably believed that someone in the apartment might need emergency care. Accordingly, we affirm.

FACTS

Kelso Police Officer Ken Hochhalter responded to a call of a possible domestic violence assault or dispute. Hochhalter, who has training and experience in responding to domestic violence situations, testified that he is always concerned about possible injuries and officer safety in domestic violence situations.

Upon arriving at the apartment complex, Hochhalter met a woman at the security door.

The woman reported that two people had been fighting in the hallway and that they had gone inside apartment C. Hochhalter went to apartment C and stood and listened at the door for a minute to a minute-and-a-half. He heard two people in the apartment and heard someone sniffling or crying. After Hochhalter knocked on the door, Cherilee Neer answered, appearing "distraught" with a flushed face and breathing rapidly. Clerk's Papers (CP) at 24. Cherilee said she was in a hurry to go to work. She denied that anyone else was inside, explaining that "he just left" through the doorway that Hochhalter was standing in. CP at 24.

Hochhalter became concerned that someone in the apartment might be injured. The police had received multiple calls reporting a dispute in the building. And although Cherilee denied that anyone else was in the apartment, she repeatedly glanced behind her. Hochhalter entered the apartment over Cherilee's verbal objection, explaining that he needed to check the apartment to ensure that no one was injured. With his gun drawn but held down at his side, Hochhalter looked in the living room and kitchen. Hochhalter heard movement inside a large closet, opened the door, and found Keith Neer inside.

Hochhalter ordered Neer out of the closet. At this time, Sargeant Lane entered the apartment and saw on a coffee table a well-used glass smoking device with white residue. To ensure the officers' safety, Hochhalter handcuffed Neer. Neer did not appear to be injured, but Hochhalter testified that he continued to have safety concerns because Neer had been hiding in the closet and the officers saw what appeared to be Derringer pistols on a coffee table.[1]

Hochhalter learned, through a warrant check, that Neer had an outstanding felony

[1] After securing Neer, the officers learned that the items were decorative cigarette lighters.

warrant. Hochhalter then arrested Neer. While searching him, incident to the arrest, Hochhalter found methamphetamine.

The State charged Neer with one count of possessing methamphetamine. Neer moved to suppress the drug evidence, arguing that the officers' entry into his apartment violated article I, section 7 of the Washington Constitution and the Fourth Amendment of the United States Construction.

At the suppression hearing, Hochhalter and Lane described the events leading up to Hochhalter's entry into the apartment. The trial court denied Neer's motion and entered findings of fact and conclusions of law. After a bench trial on stipulated facts, the court found Neer guilty as charged.

ANALYSIS

Neer argues that the trial court erred in denying his motion to suppress evidence seized during the search of the apartment. When reviewing a ruling on a motion to suppress, we ask whether substantial evidence supports the trial court's findings of fact; we review conclusions of law de novo. *State v. Schlieker*, 115 Wn. App. 264, 269, 62 P.3d 520 (2003) (citations omitted).

Neer argues that (1) substantial evidence does not support finding of fact 6 that "Officer [Hochhalter] was concerned that someone might be injured inside the residence." Br. of Appellant at 14-16.

A. Substantial Evidence and the Court's Finding of Fact 6

We will not disturb a factual finding that substantial evidence supports. *Schlieker*, 115 Wn. App. at 269 (citing *State v. Crane*, 105 Wn. App. 301, 305-06, 19 P.3d 1100 (2001)).

Substantial evidence is "a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994) (citing *State v. Halstien*, 122 Wn.2d 109, 129, 857 P.2d 270 (1993)).

Here, the evidence is sufficient to persuade a fair-minded, rational person that Hochhalter was concerned that someone inside the apartment might be injured. The officers had received multiple calls reporting a domestic dispute. Hochhalter testified that, based on his training and experience, he is always concerned about injuries in domestic dispute situations. Before entering the apartment, Hochhalter heard someone sniffling or crying. When he talked with Cherilee, she appeared distraught and denied that anyone else was in the apartment. She told Hochhalter that "he had just left" through the door where Hochhalter was standing. Hochhalter knew this was not true; he had heard two people in the apartment and no one could have left without passing him. Moreover, Cherilee kept glancing behind her. This evidence was more than sufficient for Hochhalter to reasonably believe that something was amiss in the apartment that could well involve injuries.

B. Warrantless Search

Neer argues that Hochhalter's warrantless search and seizure violated his state and federal privacy rights. The State counters that the emergency exception justified the officers' warrantless search.

Under both the Fourth Amendment of the United States Constitution and article I, section 7 of the Washington Constitution, a warrantless search is per se unreasonable unless it falls within one of the narrow and well-delineated exceptions to the warrant requirement. *State v. Ross*, 141

Wn.2d 304, 312, 4 P.3d 130 (2000) (citing *State v. Myers*, 117 Wn.2d 332, 337, 815 P.2d 761 (1991)). The emergency exception justifies a warrantless search when "'(1) the officer subjectively believed that someone likely needed assistance for health or safety reasons; (2) a reasonable person in the same situation would similarly believe that there was a need for assistance; and (3) there was a reasonable basis to associate the need for assistance with the place searched.'" *State v. Kinzy*, 141 Wn.2d 373, 386-87, 5 P.3d 668 (2000) (quoting *State v. Menz*, 75 Wn. App. 351, 354, 880 P.2d 48 (1994)). When analyzing these factors, we view the officer's actions in light of how the situation appeared to the officer at the time. *State v. Lynd*, 54 Wn. App. 18, 22, 771 P.2d 770 (1989).

In this case, the warrantless search was permissible because the State established all three criteria of the emergency exception. First, as we have discussed, Hochhalter subjectively believed that someone in the apartment was potentially injured. Second, ample evidence supports the objective reasonableness of Hochhalter's belief. The officers had received multiple calls reporting a domestic dispute, and Hochhalter heard sounds consistent with sniffling or crying when he listened at the door. Cherilee appeared "distraught" when she answered the door, and she repeatedly glanced behind her while denying that there was another person in the apartment. Third, there was a reasonable basis to associate the need for assistance with the place searched. Hochhalter was concerned that someone in the apartment was injured. And it was reasonable for Hochhalter to check the main rooms and the closet, after hearing sounds of movement, for an injured person.

Neer argues that the emergency exception is inapplicable, citing *Schlieker*, 115 Wn. App.

264.[2] Neer's reliance on *Schlieker* is misplaced, however, because it is factually distinguishable. First, Hochhalter believed that someone might be injured inside Neer's apartment. In *Schlieker*, the officers were investigating allegations of trespassing and drug activity, not safety concerns. *Schlieker*, 115 Wn. App. at 271. Second, the place searched (Neer's apartment) was the site of the reported domestic dispute. In *Schlieker*, the officers first investigated the site of the reported domestic disturbance (the house) and then performed a separate warrantless search of a trailer on the property. *Schlieker*, 115 Wn. App. at 267-68. *Schlieker* does not help Neer.

Finally, Neer argues that the emergency exception does not justify the search because the officers observed no sign of injury and handcuffed and searched Neer without asking if he was injured. But

> [p]olice officers responding to a domestic violence report have a duty to ensure the present and continued safety and well-being of the occupants. . . . In addition, the fact that the occupants [appear] to be unharmed when the officers enter[] [does] not guarantee that the disturbance [has] cooled to the point where their continued safety [is] assured. Until they [have] an opportunity to observe [the defendant] and talk to him, they [have] no knowledge of his condition and state of mind.

*State v. Raines*, 55 Wn. App. 459, 465-66, 778 P.2d 538 (1989) (internal citations omitted).

Neer's argument would require the officers to immediately stop their investigation of possible violence and injuries once Hochhalter discovered Neer in the closet apparently uninjured. As in *Raines*, we decline to impose such a rigid format on officers investigating possible domestic

[2] In *Schlieker*, officers responded to a domestic disturbance call reporting a gunshot. The residents of the reported address asked the officers to talk with individuals living in a trailer on their property without permission (the property owners suspected drug activity in the trailer). The officers removed the individuals from the trailer and handcuffed them for officer safety. Upon reentering the trailer, the officers found evidence of methamphetamine manufacturing. This court held that the emergency exception did not apply because the officers invoked the exception merely as a pretext for an evidentiary search. *See Schlieker*, 115 Wn. App. at 266-268, 271-72.

violence. Clearly, something had gone wrong in the apartment. Cherilee appeared distraught and lied to Hochhalter about whether she was alone in the apartment. And Neer's hiding in the closet did nothing to allay Hochhalter's concerns about the safety of both Neer and Cherilee.[3] Given the situation, Hochhalter was at least entitled to run a warrants check on Neer and ask him about the reported disturbances.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Quinn-Brintnall, C.J.

Penoyar, J.

[3] In *Raines* the police also found the defendant hiding on the premises. *Raines*, 55 Wn. App. at 461.